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By email: david.wang@acc.gov.au

Lyn Camilleri
General Manager
Competition Exemptions - Mergers, Exemptions and Digital
Australian Competition and Consumer Commission
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Melbourne VIC 3000

Copies to: David Wang and Andrew Ng

Public register version – restriction of publication claimed in relation to part

Dear Ms Camilleri

**Application for Authorisation - AA1000615-1 - Virgin Australia & Alliance Airlines –
Supplementary Submission**

We refer to the joint application for authorisation of the Charter Alliance between Virgin Australia Airlines Pty Ltd, Virgin Australia Regional Airlines Pty Ltd (**VARA**) (together, **Virgin Australia**), Alliance Airlines Pty Limited and Alliance Aviation Services Ltd (together, **Alliance**), lodged with the Australian Competition and Consumer Commission (**ACCC**) on 27 May 2022 and the submissions in support of that application (**Authorisation Application**); Alliance's 13 September 2022 response to the ACCC's 30 August 2022 request for information from Alliance (Alliance's **RFI Response**) and Virgin Australia's 30 September 2022 response to the ACCC's 15 September request for information from Virgin Australia.

This letter encloses a brief submission on behalf of Virgin Australia noting:

- the significant public benefits that have resulted from the Charter Alliance and will continue to result with its reauthorisation; and
- **[RESTRICTION OF PUBLICATION CLAIMED]**.

Alliance's commercial decision to seek reauthorisation and the joint submission in support of the reauthorisation application demonstrate the effect of the Charter Alliance in enhancing the competitive offer of the Applicants and the public benefits that flow from this. **[RESTRICTION OF PUBLICATION CLAIMED]**:

- **[RESTRICTION OF PUBLICATION CLAIMED]**;
- **[RESTRICTION OF PUBLICATION CLAIMED]**;
- **[RESTRICTION OF PUBLICATION CLAIMED]**.

[RESTRICTION OF PUBLICATION CLAIMED].

Confidentiality

Information indicated with the words **[RESTRICTION OF PUBLICATION CLAIMED]** is confidential to Virgin Australia or Alliance and is provided on the basis set out in paragraph 5.7 of the *Guidelines for Authorisation of Conduct (non-merger)*. Virgin Australia requests that it is excluded from the public register as disclosure of this information would unreasonably and adversely affect Virgin Australia or Alliance in respect of its lawful business, commercial and financial affairs.

Virgin Australia would be happy to discuss further the information in this supplementary submission.

Yours sincerely
Gilbert + Tobin

Louise Klamka
Partner



Rebecca Dollisson
Special Counsel



Virgin Australia Supplementary Submission

1 The Charter Alliance (CAA) results in significant public benefits

1.1 Overview

As noted in the Applicants' joint submission in support of reauthorisation, the CAA has resulted in, and will continue to result in, significant public benefits, including:

- operational efficiencies;
- enhanced product and service offerings; and
- the promotion of competition.

The Charter Alliance promotes competition in tender processes by providing a choice of operators capable of providing a broad and flexible fleet, both charter and RPT services, and the option of value-added services like the ability to earn frequent flyer points on charter services. Importantly, this choice is available and has the effect of promoting competition regardless of whether the Charter Alliance is ultimately successful in winning a contract, whether a resource company decides to award a single contract or split its work between providers and is made available via the Charter Alliance even where the RFP is led by either Virgin Australia or Alliance as an individual operating carrier (rather than both jointly). The fact that this choice is available means that Qantas is incentivised to in turn improve its offers, terms, and pricing to customers in the tender process.

1.2 Promotion of competition in tender processes

The CAA has allowed the parties to provide stronger bids and deliver better services to customers with more compelling, competitively priced offerings than would otherwise be possible on a standalone basis. It achieves this through increased operational efficiencies, fleet flexibility, network connectivity and access to value-added benefits (which can be important components of the employee benefits package provided to FIFO workers, as well as a driver of choice for resource companies). It has also meant that other suppliers have had to respond to those stronger bids and offers by in turn improving their price-service offers.

Qantas has the largest fleet of aircraft in Australia and can offer aircraft with capacities ranging between 36 and 180 passengers suitable for air transport services to and from regional and remote resource locations on a nation-wide basis. Qantas is also uniquely able to offer customers the ability to earn and burn frequent flyer points across both charter and RPT services on a large scale across its domestic and international network and schedule flights to ensure convenient connectivity between charter and RPT operations.

Without the CAA:

- VARA does not have charter operations outside Western Australia and Virgin Australia only has access to limited aircraft with medium capacity of 70-100 seats which restricts its ability to effectively compete and challenge others for the provision of services to customers where aircraft of this capacity is more efficient, cost effective or specified as a preference or requirement by the customer.
- Alliance does not have a significant RPT operations or aircraft with capacity of greater than 100 seats and passengers travelling on Alliance-operated charter services would be unable to earn and redeem FFP as Alliance does not, and would not, operate its own frequent flyer program.

Under the CAA the parties have:

- been able to provide competitive pricing to customers that would not otherwise have been possible. By having access to the other party's complementary fleet capacity and efficiently cross utilising each other's assets to service charter opportunities, both parties have been able to control unit costs in a way that would not be possible absent the CAA. Absent this cooperation, each party would likely have been required to invest significant capital expenditure in incremental assets that may be under-utilised resulting in higher unit costs for the business, thereby drive-up pricing levels for the customers.
- the ability to satisfy a broader range of customer requirements and enter bids covering a broader scope of work than would be possible on a standalone basis. For example:
 - any bid requiring fleet types or capacity that the Applicants individually do not have but are able to provide together or the ability to provide charter and RPT services and value-added benefits across both.
 - **[RESTRICTION OF PUBLICATION CLAIMED]** requested F70, F100 and A320 aircraft – 80 seats, 100 seats and 168+ seats, charter and RPT services and frequent flyer benefits which neither airline could provide all on a standalone basis.
 - **[RESTRICTION OF PUBLICATION CLAIMED]** which requested F100 and A320 aircraft and frequent flyer benefits which neither airline could provide on a standalone basis.
 - under the CAA, VARA and Alliance could combine their capacity and submit a conforming bid for the full scope of work required by the customer in the **[RESTRICTION OF PUBLICATION CLAIMED]** which neither airline would have had sufficient capacity to do otherwise.
- the ability to provide the customer with a better, more valuable offering in tenders where the parties could have bid for the required scope of work individually. For example:
 - Through the Charter Alliance, Virgin Australia and Alliance have been able to provide **[RESTRICTION OF PUBLICATION CLAIMED]** with value-added services across both their operated services. **[RESTRICTION OF PUBLICATION CLAIMED]** is focused on attracting and retaining its workforce and was interested in providing an enhanced workforce travel experience as part of this employee benefit strategy. The Charter Alliance was able to provide access to Velocity Frequent Flyer points when travelling on both Virgin Australia and Alliance to mine sites. Through access to each other's fleet capacity, the Charter Alliance is also able to provide additional flights at short notice for the customer, providing the flexibility it needs to respond to changes in its requirements, minimising disruption for passengers.
- the ability to provide customers with two options instead of one where a 'one stop' shop for charter/RPT/benefits is desired or where Qantas is the only supplier with sufficient fleet type, scale, and capacity to satisfy customer requirements efficiently and reliably. For example:
 - **[RESTRICTION OF PUBLICATION CLAIMED]** Due to the fleet type variants and capacity requirements of the customer, the Charter Alliance with its combined fleet capability (where Alliance provides the F100, and Virgin Australia provides the A320) is the only alternative to Qantas. Without the Charter Alliance, the customer would have no alternative option in the market to compete in this tender process for the full scope of work.
- the ability to better service customers including pre-existing clients or clients of one of the parties in the event of increased capacity requirements or flight disruptions and delays. For example:

- **[RESTRICTION OF PUBLICATION CLAIMED]**.
- VARA has used Alliance aircraft on various occasions on an ad-hoc basis to ensure schedule integrity for customers during times of limited aircraft availability. In total, across both scheduled and ad-hoc services, between 9 June 2017 and 16 September 2022, VARA has utilised Alliance aircraft to operate a total of 1124 sectors. An example of this ad-hoc support is Alliance operating services for **[RESTRICTION OF PUBLICATION CLAIMED]** on behalf of VARA on a wet-lease basis.
- **[RESTRICTION OF PUBLICATION CLAIMED]**
- **[RESTRICTION OF PUBLICATION CLAIMED]**, has benefitted from the ability to access capacity support from the other airline when needed – which would not be possible without the CAA.
- The CAA has also allowed better scheduling for **[RESTRICTION OF PUBLICATION CLAIMED]**. Other examples of where the CAA has been able to offer additional aircraft capacity and therefore better scheduling than either party could have offered individually include **[RESTRICTION OF PUBLICATION CLAIMED]**.
- Increased competition in the bid process by providing a real challenger to Qantas so that it cannot simply rely on its unique ability to offer an integrated charter/RPT offering with value-added benefits across a broad network with large scale fleet. This increases competitive tension in the process whether or not the customer ultimately decides to have separate suppliers for charter and RPT services – increasing the pressure on Qantas to compete fiercely for each component. It is also an increase in bargaining power and competitive pressure that cannot be easily replicated without the CAA because of the significant ongoing investment and scale required to achieve the more like-for like offering in competition with Qantas possible under the CAA; and
- achieved ACMI cost savings, a reduction in passenger tax at Perth airport that was passed on to customers and savings in maintenance including avoidance of replacing F100 engines and avoidance of unnecessary fleet expansion costs.

1.3 No anti-competitive detriment

While the Charter Alliance removes competition between Virgin Australia and Alliance Airlines, this removal of competition is outweighed by the pro-competitive benefits of the Charter Alliance providing stronger competition for Qantas.

To our knowledge, there has been no suggestion from interested parties to date of any significant competition concerns arising from the Charter Alliance. According to Virgin Australia's estimates of FIFO capacity shares based on weighted aircraft capacity, Qantas has maintained its position as the largest FIFO service provider nationwide. In WA where the parties' operations overlapped, Virgin Australia and Alliance Airlines' combined market share has remained constant since 2015 demonstrating that the Charter Alliance has not eroded any competition in the region but has allowed Virgin Australia and Alliance Airlines to retain their combined FIFO capacity in a highly contested market and prevent Qantas, the number one operator, from further consolidating its market leading position. Virgin Australia's view is that the Charter Alliance has enabled the Applicants to compete against Qantas in WA more effectively than either could have alone. Qantas remains larger than a combined Virgin Australia and Alliance Airlines.

2 **[RESTRICTION OF PUBLICATION CLAIMED]**

Alliance's decision to seek reauthorisation of the Charter Alliance and the joint submission provided in support of the application demonstrates Alliance's assessment that the Charter Alliance has and will continue to enable it to offer services it cannot alone and, in doing so, improve its competitive position, resulting in significant public benefits. **[RESTRICTION OF PUBLICATION CLAIMED]**.

[RESTRICTION OF PUBLICATION CLAIMED]

[RESTRICTION OF PUBLICATION CLAIMED]

[RESTRICTION OF PUBLICATION CLAIMED] Without the CAA, Qantas would be the only operator able to submit a conforming bid for the entire scope of services required by **[RESTRICTION OF PUBLICATION CLAIMED]**. As Virgin Australia has previously submitted, customers are unlikely to sponsor entry by a new operator in the short to medium term that will have the scale and network reach to be able to contest contracts that only Qantas will be able bid for without the CAA. Even if the customer ultimately decides to split the provision of services between providers there is benefit in having the superior service-price offering available under the CAA to exert greater competitive pressure on Qantas and in allowing the customer to benefit from the enhanced service delivery of each component. For example:

- Virgin Australia understands that **[RESTRICTION OF PUBLICATION CLAIMED]**. Virgin Australia considers that Qantas is likely to have offered **[RESTRICTION OF PUBLICATION CLAIMED]** a significantly more attractive offer for these services than would be the case without the CAA being in place **[RESTRICTION OF PUBLICATION CLAIMED]**.
- the reduced risk through the availability of additional capacity support across a larger more diverse fleet resulting in increased reliability and flexibility for the customer and the ability to accrue frequent flyer points on charter services.

We refer to Virgin Australia's 30 September response to the ACCC's 15 September request for information and note the many examples of where the parties' bids and service provision was improved by the CAA to the benefit of customers. These benefits include the likelihood that future tender bids and service capability is significantly enhanced with the CAA in place and that this materially increases the competitive bidding process, particularly against Qantas.

2.1 The Charter Alliance has resulted in pro-competitive benefits in Queensland

We understand from our call with you on 7 October 2022 that the Commission is particularly interested in the effect of the Charter Alliance in Queensland. As you have requested submissions by 10 October 2022 if they are to be taken into consideration before a Draft Determination, we are limited in our ability to respond in detail on this point within the timeframe.

[RESTRICTION OF PUBLICATION CLAIMED]

[RESTRICTION OF PUBLICATION CLAIMED]

Under the CAA, the Applicants significantly increase competition for the supply of FIFO services nationally and in particular in the key FIFO demand areas of WA and QLD. Beyond the operational efficiencies and greater fleet capabilities and flexibilities enabled under the CAA, the product and service offering that the Applicants can provide is enhanced through combining Virgin Australia's national regular passenger network with Alliance Airlines' national charter network. Qantas is no longer the only option that can offer integrated charter /RPT services, a strong frequent flyer program and capacity amongst a mix of smaller and larger aircraft. This choice comes into play whether these features are required by the customer or offered by Qantas and the customer wants to test that offer or require Qantas to sharpen their pencil in relation to components of its supply as its ability to provide that offer is no longer unique.

[RESTRICTION OF PUBLICATION CLAIMED]. Virgin Australia/VARA has very limited charter operations in Queensland and under the Charter Alliance Agreement Alliance would most likely be the Operating Airline for any New Charter Opportunity requiring aircraft capacity of 100 seats or less in Queensland. But that does not mean that the Charter Alliance has not enhanced this offer or enabled Virgin Australia to become more competitive in this geographic area. The CAA allows a stronger bid and better outcome for the customer through the ability to offer RPT services across a broad network, additional capacity support and fleet types (e.g., Virgin Australia's larger aircraft in combination with

Alliance's smaller aircraft allowing optimisation of aircraft utilisation and minimisation flight disruption or delay) and value-added services like frequent flyer points which can be accrued on charter flights and used across a broad network. Without the Charter Alliance, passengers travelling on Alliance-operated charter services would be unable to earn frequent flyer points and resource companies that want to offer this valuable employment benefit to their staff would have the choice of Qantas only.

For example:

- the [REstriction of Publication Claimed] tender for charter and RPT services [REstriction of Publication Claimed] specifically requested frequent flyer benefits. This was able to be offered because of the CAA [REstriction of Publication Claimed].
- [REstriction of Publication Claimed]. A combined proposal covering both RPT and Charter services was provided, [REstriction of Publication Claimed] with each party able to access the support of the other as jointly proposed. This includes [REstriction of Publication Claimed] the provision of Velocity Frequent Flyer points and other value-adds, including lounge access for eligible members and access to VA and its global partner network and the ability to use VARA's aircraft on charter services to assist with additional capacity when required in the event of additional flights or a disruption).

In relation to RPT services, routes in regional Queensland tend to suit smaller aircraft due to thin demand and runway limitations - aircraft that Virgin Australia does not have in its own fleet. Under the CAA better access to Alliance's wetlease capacity on more favourable terms has allowed these services to continue to be more effectively contested by Virgin Australia against Qantas.

For example, [REstriction of Publication Claimed]. When Qantas became the monopoly operator following Virgin's withdrawal from Brisbane – Moranbah in September 2017, average corporate fares on the route increased significantly with publicly available fares rising to over \$1,000 return. Qantas CEO, Alan Joyce, dismissed concerns raised by the community over these price hikes saying that residents should just drive (the many hours on unsealed roads) to Mackay or Rockhampton if they want cheaper flights. [Daily Mercury, 'Drive to Mackay for cheap flights' Joyce tells Moranbah, 12 March 2018 <https://www.dailymercury.com.au/news/drive-to-mackay-for-cheap-flights-joyce-tells-mora/3358990/>.]

Following a runway upgrade at Moranbah in late in 2018 Virgin Australia was able to recommence services into Moranbah on F70 aircraft operated by Alliance under wetlease. The Charter Alliance incentivises Alliance Airlines to provide Virgin Australia with more favourable access to wetlease services as they benefit both parties in the context of joint bids to resource companies. [REstriction of Publication Claimed].

[REstriction of Publication Claimed]. For example:

- despite [REstriction of Publication Claimed] being a Pre-existing customer, joint bids were submitted under the CAA [REstriction of Publication Claimed] to satisfy the customer's requirements [REstriction of Publication Claimed].
- [REstriction of Publication Claimed].
- [REstriction of Publication Claimed].

In conclusion, [REstriction of Publication Claimed] the CAA has allowed the parties to better respond to a broader scope of customer requirements including allowing compliant bids which would not otherwise be possible and a more compelling proposition and service delivery than each party could provide standalone even where compliant or conforming bids could be made individually. This provides additional benefits to customers (including through increased competitive response)

regardless of the customer's ultimate decision about which operator to award the contract to, which is influenced by a range of factors including customer-supplier relationships.